

A. G. Contract No. KR97 0665TRN
ADOT ECS File: JPA 97-45
Project: STP-000-6(104)P
TRACS: SR118 01C
Section: Tilbury Drive @ CBRR
AAR/DOT No. 742-393-J

INTERGOVERNMENTAL AGREEMENT
BETWEEN
THE STATE OF ARIZONA
AND
THE TOWN OF KEARNY, ARIZONA

THIS AGREEMENT is entered into 30 April, 1997,
pursuant to Arizona Revised Statutes, Sections 11-951 through 11-
954, as amended, between the STATE OF ARIZONA, acting by and
through its DEPARTMENT OF TRANSPORTATION (the "State") and the
TOWN OF KEARNY, ARIZONA acting by and through its MAYOR AND TOWN
COUNCIL (the "Town").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes
Section 28-108 and 28-112 to enter into this agreement and has by
resolution, a copy of which is attached hereto and made a part
hereof, resolved to enter into this agreement and has delegated
to the undersigned the authority to execute this agreement on
behalf of the State.

2. The Town is empowered by Arizona Revised Statutes
Section 48-572 to enter into this agreement and has by
resolution, a copy of which is attached hereto and made a part
hereof, resolved to enter into this agreement and has authorized
the undersigned to execute this agreement on behalf of the Town.

3. The Arizona Corporation Commission is empowered by
Arizona Revised Statutes Section 40-337 to participate in the
funding of this project, and has authorized funds for this
project.

4. Congress has authorized appropriations for the erection
of automatic warning signals, automatic gate arms, plank
crossings, pavement markings, and other appurtenances.

NO. <u>21526</u>
FILED WITH SECRETARY OF STATE
Date Filed <u>04/30/97</u>
<u>Jane Lee Hull</u> Secretary of State
By <u>Vicky Greenwood</u>

5. Such project within the boundary of the Town has been selected by the Town; the field survey of the project has been completed; and the plans, estimates and specifications have been prepared and, as required, submitted to the Federal Highway Administration ("FHWA") for its approval.

6. The only interest of the State in the project is in the acquisition of federal funds for the use and benefit of the Town by reason of federal law and regulations under which funds for the project are authorized to be expended.

7. The work embraced in this agreement and the estimated cost are as follows: Upgrade Railroad Crossing.

Preliminary and Construction Engineering	\$	750.00
Upgrade flashing lights from 8" to 12"		
by railroad forces	\$	36,191.00
Total Project	\$	36,941.00
Federal Aid Funds @ 94.3% of 36,941.00	\$	34,835.00
AZ Corp. Comm. Funds @ 5.7% of \$36,941.00	\$	2,106.00
Kearny Town Funds	\$	0.00

THEREFORE, in consideration of the mutual covenants expressed herein, it is agreed as follows:

II. SCOPE OF WORK

1. The State shall submit a program containing the aforementioned project to FHWA with the recommendation that it be approved for construction.

a. If such project is approved for construction by FHWA and the funds are available for construction of the project, the State with the aid and consent of FHWA will authorize the Railroad Company to proceed with the work covered by the State-Railroad Agreement and will request the maximum federal funds available.

b. Should some unforeseen conditions or circumstances increase the cost of said work required by a change in the extent or scope of the work called for in this agreement, the State shall not be obligated to incur any expenditure in excess of the amount of the Town's deposit unless and until so authorized in writing by the Town.

2. The Town shall acquire, without cost to the State, the necessary right-of-way and hereby certifies that all necessary rights-of-way have been or will be acquired.

3. Once acquired, the Town shall remove from the Town right-of-way all obstructions or unauthorized encroachments of whatever nature, either above or below the surface of the roadway, and hereby certifies that all obstructions and encroachments have been or will be removed therefrom.

4. The Town shall not permit or allow any encroachments, except those authorized by permit, upon, or private use of, the Town right of way. In the event of any unauthorized encroachment or improper use, the Town shall take all necessary steps to remove or prevent any such encroachment or use; failing in which the State shall have the right to proceed with the removal or prevention thereof, the cost of such removal or prevention to be borne by the Town.

5. Upon completion of construction, the Town shall provide for, at its own cost and as an annual item in its budget, proper maintenance; such maintenance (exclusive of maintenance by the Railroad Company of its facilities) to include, but not be limited to, traffic signals, signs, islands, curbs and markings necessary for the purpose of regulating, warning and guiding traffic.

6. The Town shall mark and sign railway-highway grade crossings in accordance with the requirements of the current edition of the Manual on Uniform Traffic Control Devices for Streets and Highways, within 45 days after the railroad has completed its work; failing that, the State may proceed with the marking and signing thereof, the cost of which shall be borne by the Town.

7. By such regulation as it may by ordinance provide, the Town shall regulate parking and not permit vehicles to be left on the street in any manner other than at and parallel with the curb and to restrict parking so as to prevent conflicts with moving traffic.

III. MISCELLANEOUS PROVISIONS

1. The State assumes no financial obligation or liability under this agreement, nor for any resulting construction project. The Town, in regard to the Town's relationship with the State only, assumes full responsibility for the design, plans, specifications, reports, the engineering in connection therewith and the construction of the improvements contemplated, cost over-runs and construction claims. Such assumption of the responsibility by the Town for the benefit of the State in no way acts as a waiver by the Town for the benefit of the railroad company or any responsibility the railroad company has in the design, plans, specifications, reports, the engineering in connection therewith and the construction of the improvements contemplated, cost overruns and construction claims. It is understood and agreed that the State's participation is confined solely to securing federal aid; that any damages arising from carrying out, in any respect, the terms of this agreement or any modification thereof, shall be solely the liability of the Town and that the Town hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any

other damage to any person or property whatsoever, which is caused by any activity, condition, or event arising out of the performance or nonperformance of any provisions of this agreement by the State, any of its departments, agencies, officers and employees, the Town, any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, expenses of litigation and attorneys' fees.

2. The cost of the design, construction and construction engineering work covered by this agreement is to be borne by FHWA, Arizona Corporation Commission and the Town, each in the proportion prescribed or as fixed and determined by FHWA as stipulated in this agreement. Therefore, in the event that funds to match federal funds are not made available by the Corporation Commission, the Town agrees to furnish and provide the State with Town funds in an amount equal to the difference between the total cost of the work provided for in this agreement and the amount of federal aid received.

3. This agreement shall remain in force and effect until completion of the work herein embraced; provided, however, that any provisions in this agreement for maintenance shall be perpetual, unless assumed by another competent governmental entity.

4. This agreement shall become effective upon filing with the Secretary of State.

5. This agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511.

6. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.

7. In the event of any controversy which may arise out of this agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518.

8. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation
Joint Project Administration
205 South 17 Avenue, Mail Drop 616E
Phoenix, AZ 85007

Town of Kearny
Town Manager
912-C Tilbury Road
Kearny, AZ 85237


9. Attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this agreement and that the agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.


TOWN OF KEARNY, ARIZONA

STATE OF ARIZONA
Department of Transportation

By 
ROSE E. BRADFORD
Mayor

By 
PETER L. ENO
Contract Administrator

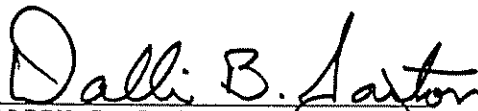
ATTEST:

By 
MARGARET GASTON
Town Clerk

RESOLUTION

BE IT RESOLVED on this 2nd day of April 1997, that I, the undersigned LARRY S. BONINE, as Director of the Arizona Department of Transportation, have determined that it is in the best interests of the State of Arizona that the Department of Transportation, acting by and through the Intermodal Transportation Division, to enter into an agreement with the Town of Kearny for the purpose of defining responsibilities for the design, construction and maintenance of railroad crossing improvements on Tilbury Drive at the Copper Basin Railroad.

Therefore, authorization is hereby granted to draft said agreement which, upon completion, shall be submitted to the Contract Administrator for approval and execution.


for LARRY S. BONINE
Director

TOWN OF KEARNY**REGULAR MEETING**

**A REGULAR MEETING OF THE TOWN COUNCIL OF THE TOWN OF
KEARNY, ARIZONA, HELD AT THE CONSTITUTION HALL LOCATED
AT 912-E TILBURY ROAD ON MONDAY, APRIL 14, 1997, AT 7:30 P.M.**

COUNCILMEMBERS PRESENT

Vice-Mayor
Councilmember
Councilmember
Councilmember
Councilmember

Wanda Dalton
Mary Anne Andrade
Kelle E. Elliott
Rudolph G. Flores
Debra Sommers

TOWN STAFF PRESENT

Town Manager
Town Clerk
Town Attorney
Police Chief

Terrel H. Hinton
Margaret Gaston
Steve Cooper
Terrance J. Wesbrock

VISITORS ATTENDING

Peg Radcliffe
Audie Covey

Lyman Radcliffe

CALL TO ORDER/PLEDGE OF ALLEGIANCE

The meeting was called to order at 7:30 p.m. by Vice-Mayor Wanda Dalton, followed by the Pledge of Allegiance.

ROLL CALL

Roll Call was taken by the Town Clerk, Margaret Gaston.

APPROVAL OF MINUTES

Councilmember Elliott said her middle initial is M., not E.; Councilmember Flores said his middle initial was G., not E.; and Councilmember Andrade said she was not in attendance at the March 10, 1997, meeting, (minutes listed her as being there). Councilmember Andrade moved that the minutes of March 10, 1997, be approved as corrected; Councilmember Flores seconded; motion carried unanimously.

CALL TO THE PUBLIC

Vice Mayor Dalton asked if anyone would like to speak at this time; no one responded.

Regular Meeting

Page 3

April 14, 1997

bid be awarded to Stark Fence Co. In the amount of \$58,900.00 for materials and installation; Councilmember Andrade seconded, motion carried unanimously.

LOTTERY MONEY CULTURAL PROJECTS FUNDS DISTRIBUTION

Terry Hinton, Town Manager, said that by state statute there is a 5% limit of LTAF funds that can be spent on cultural projects. There are four requests in your packet: Eastern Pinal Literacy Council, the ARC, K-Team and Friends of the Library. It is up to the Council on how the money will be divided. There will be a total of \$1700 available. In the past the ARC had received half and the rest divided up the other half. Councilmember Andrade said she would like to see the ARC receive half; and split the half among the others; Councilmember Elliott said she would like to see the K-Team receive more money to help do more programs for the youth. Vice-Mayor Dalton suggested that \$500 be given to the ARC and the K-Team each, and split the \$700 between the EPLC and the Friends.

Councilmember Elliott moved that \$500 be given to the ARC and the K-Team each, and split the \$700 between the EPLC and the Friends; Councilmember Sommers seconded, motion carried unanimously.

1996/1997 AUDIT

Town Manager, Terry Hinton, and Town Clerk, Margaret Gaston, both recommended that Colby and Company be awarded the 1996/1997 Audit for \$4,750. Councilmember Andrade moved that Colby & Company be asked to do the 1996/97 audit; Councilmember Flores seconded, motion carried unanimously.

RESOLUTION NO. 97-425 A RESOLUTION OF THE MAYOR AND COUNCIL OF THE TOWN OF KEARNY, ARIZONA, NOTICE OF THE BOND ELECTION; ESTABLISHING THE POLLING PLACE AND THE TIMES THAT SUCH POLLS WILL BE OPEN; AND APPOINTING ELECTION OFFICIALS.

Councilmember Andrade moved that Resolution No. 97-425 be approved; Councilmember Flores seconded, motion carried unanimously.

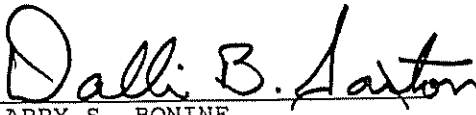
AUTHORIZE MAYOR TO SIGN IGA WITH ADOT FOR TILBURY RAILROAD CROSSING REPAIRS.

Terry Hinton, Town Manager, said that ADOT has some money that will be used to upgrade the RR crossings. The engineer plans have been done, and the Cooper Basin Railroad personnel will do the work; it's just that the crossing is in the town limits and therefore an IGA has to be signed between ADOT and the Town of Kearny. Councilmember Elliott moved that the Mayor or Vice Mayor be allowed to sign the IGA with the Arizona Department of Transportation; Councilmember Andrade seconded; motion carried unanimously.

RESOLUTION

BE IT RESOLVED on this 2nd day of April 1997, that I, the undersigned LARRY S. BONINE, as Director of the Arizona Department of Transportation, have determined that it is in the best interests of the State of Arizona that the Department of Transportation, acting by and through the Intermodal Transportation Division, to enter into an agreement with the Town of Kearny for the purpose of defining responsibilities for the design, construction and maintenance of railroad crossing improvements on Tilbury Drive at the Copper Basin Railroad.

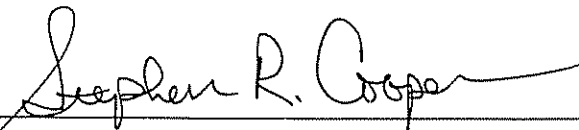
Therefore, authorization is hereby granted to draft said agreement which, upon completion, shall be submitted to the Contract Administrator for approval and execution.


for LARRY S. BONINE
Director

APPROVAL OF THE KEARNY TOWN ATTORNEY

I have reviewed the above referenced proposed intergovernmental agreement, between the DEPARTMENT OF TRANSPORTATION, HIGHWAYS DIVISION and the TOWN OF KEARNY and declare this agreement to be in proper form and within the powers and authority granted to the Town under the laws of the State of Arizona.

DATED this 14th day of APRIL, 1997.

A handwritten signature in cursive script, reading "Stephen R. Cooper". The signature is written in dark ink and is positioned above a horizontal line.

Town Attorney



STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL

1275 WEST WASHINGTON, PHOENIX 85007-2926

GRANT WOODS
ATTORNEY GENERAL

TRN Main: (602) 542-1680
Direct: (602) 542-8837
Fax: (602) 542-3646
MAIN PHONE : 542-5025
TELECOPIER : 542-4085

INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. KR97-0665TRN, an agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining parties, other than the State or its agencies, to enter into said agreement.

DATED April 24, 1997.

GRANT WOODS
Attorney General

JAMES R. REDPATH
Assistant Attorney General
Transportation Section